

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

MICHAEL MOLITERNO,
Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,
Respondent.

Ref. No.: 19-0068AP-88B
UCN: 522019AP000068XXXXCI

ORDER AND OPINION

Petitioner challenges a final order from the Department of Highway Safety and Motor Vehicles (“DHSMV”) sustaining the revocation of his driving privilege. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. For the reasons set forth below, the Petition for Writ of Certiorari is denied.

Facts and Procedural History

Petitioner has three prior convictions involving substance-related impaired driving since 2000. All three are from New York. On April 10, 2019, Petitioner received an order from the DHSMV informing him that his Florida driver’s license was revoked, effective January 16, 2019, for a period of six months. The order referenced only one of the New York convictions. Petitioner did not seek review of that revocation. Subsequently, Petitioner received a separate order of revocation dated July 11, 2019, still with an effective date of January 16, informing him of the revocation of his driver’s license for a period of 10 years, based on all three New York convictions. Petitioner asked for review of that decision, and after a hearing, the revocation was upheld. Petitioner then filed the instant Petition for Writ of Certiorari.

Discussion

Petitioner asserts several arguments on appeal, none of which were raised at the hearing below. Except in instances of fundamental error, “an issue will not be considered on appeal unless the precise legal argument forwarded in the appellate court was presented to the lower tribunal.” *Verizon Bus. Network Servs., Inc. ex rel. MCI Commc'ns, Inc. v. Dep't of Corrs.*, 988 So. 2d 1148, 1150 (Fla. 1st DCA 2008). Fundamental errors are those which go “to the foundation of the case or . . . to the merits of the cause of action.” *Sanford v. Rubin*, 237 So.2d 134, 137 (Fla. 1970).

Petitioner’s main argument is that “[a]ny reasonable interpretation of [Florida Statutes] § 322.28 regarding mandatory suspensions and revocations makes it clear that such action **MUST** be triggered by a Florida conviction.” Assuming *arguendo* that this would rise to the level of fundamental error, Petitioner’s argument still fails. The statute states in pertinent part:

3. Upon a third conviction for an offense that occurs within a period of 10 years after the date of a prior conviction for the violation of the provisions of s. 316.193 . . . the driver license or driving privilege shall be revoked for at least 10 years.

For the purposes of this paragraph, a ***previous*** conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, or any other alcohol-related or drug-related traffic offense similar to the offense of driving under the influence as proscribed by s. 316.193 will be considered a ***previous*** conviction for violation of s. 316.193 . . .

§322.28, Fla. Stat. (Emphasis added). Petitioner insists that a plain reading of the statute mandates that out-of-state convictions can only be used as one of the previous convictions that enhance the penalty; therefore, a recent Florida conviction was required in order to revoke Petitioner’s license. However, Florida Statutes section 322.24 states that “[t]he department is authorized to suspend or revoke the license of any resident of the state, upon receiving notice of the conviction of such person in another state . . . of an offense therein which, if committed in

this state, would be grounds for the suspension or revocation of his or her license.” Accordingly, the DHSMV could revoke Petitioner’s license based on only the New York convictions.

Petitioner next asserts that the two revocations violate his constitutional protection from being punished twice for the same offense. “A double jeopardy violation constitutes fundamental error, which may be raised for the first time on appeal.” *Stowe v. State*, 66 So. 3d 1015, 1016 (Fla. 1st DCA 2011) (citation omitted). However, double jeopardy applies only to criminal punishments. *See Hudson v. United States*, 522 U.S. 93, 99 (1997) (“The Clause protects only against the imposition of multiple *criminal* punishments for the same offense.” (Emphasis in original)). Consequently, there can be no double jeopardy violation in this case. *See Dep’t Of Highway Safety And Motor Vehicles v. Brandenburg*, 891 So. 2d 1071, 1075 (Fla. 5th DCA 2004) (“Sections 322.28 and 322.2616 are purely administrative provisions, and the requirements they impose fall within the Legislature’s constitutional power to insure public safety on the highways.”).

Next, Petitioner maintains the revocation violates the ex post facto clause “because the earliest conviction occurred on April 20, 2000, and the statute in effect until July 1, 2001, required that the three conditions all be within 10 years.” As with double jeopardy, “the prohibition on ex post facto laws applies only to criminal or penal provisions.” *Lescher v. Florida Dept. of Highway Safety & Motor Vehicles*, 985 So. 2d 1078, 1081 (Fla. 2008). Therefore, the ex post facto clause is inapplicable here.

Finally, Petitioner contends the ten-year revocation “violates the Petitioner’s protection pursuant to the sixth amendment of the United States Constitution and article 1 section 9 of the Florida Constitution since, in the 2011 [New York] action, . . . Petitioner was not [represented] by an attorney but rather by a paralegal.” This argument is without merit.

Conclusion

Based on the facts and analysis set forth above, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on
this ____ day of _____, 2020.

Original Order entered on October 26, 2020, by Circuit Judges Pamela A.M. Campbell,
Linda R. Allan, and Amy M. Williams.

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